

10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA

13 IN RE: MDL Docket No 04-1606 VRW
14 DEEP VEIN THROMBOSIS ORDER TO SHOW CAUSE

16 This Document Relates To:

17 | 05-1896 VRW

On May 6, 2005, Stephen J Purtill signed and filed a complaint, purportedly on behalf of Stephen and Valerie Marsh, for damages resulting from a deep vein thrombosis allegedly suffered by Mr Marsh after taking a flight operated by defendant Delta Airlines in May 2003. Mr Purtill practices with the O'Reilly & Danko law firm; two other lawyers from that firm are counsel of record in this case, Michael S Danko and Kristine K Meredith.

According to a letter from Mr Marsh received by the court on January 22, 2008, Mr and Mrs Marsh did not authorize the lawsuit

1 filed on their behalf and did not become aware of the lawsuit until
2 they received correspondence from the O'Reilly & Danko firm on
3 January 19, 2008. Doc #26 in No 05-1896. Mr Danko responded to
4 these allegations by letter on February 8, 2008. Doc #21. Mr
5 Danko told the court that Mr Marsh authorized the filing of a
6 lawsuit during initial discussions with Mr Danko in July 2003.
7 From the evidence now before the court, this statement appears to
8 be incorrect.

9 The last communication from the O'Reilly & Danko firm to
10 Mr Marsh before the filing of this lawsuit was a May 3, 2005 email
11 from a paralegal to Mr Marsh that stated "I need to get a signed
12 contract from you if you would like us to represent you in this
13 matter." Doc #22, Exh B. Mr Marsh replied to this email with a
14 one-line response containing his mailing address. Doc #22, Exh B.
15 Mr Danko argues that this reply must be construed as an indication
16 of Mr Marsh's continued interest in the litigation.

17 Even if Mr Danko is correct that this reply was an
18 indication of Mr Marsh's continued interest in the litigation, it
19 appears that the law firm communicated to Mr Marsh that no lawsuit
20 would be filed on his behalf until receipt of a signed contract
21 from Mr Marsh. This, of course, would be consistent with
22 California Business & Professions Code, section 6147(a) that
23 provides when a contingent fee contract is entered into by a lawyer
24 and client, the client shall receive a copy of the contract "signed
25 by both the attorney and client." O'Reilly & Danko never received
26 a signed contract; indeed, Mr Marsh never received the proposed
27 contract because the firm failed to update Mr Marsh's address.
28 Yet, according to a declaration submitted to the court by Mr

1 Purtill, he and Mr Danko agreed that the absence of a signed
2 contract should not prevent them from filing the complaint. Doc
3 #23 at ¶4. Mr Purtill's declaration states that he and Mr Danko
4 were concerned about a possible lapse of the statute of
5 limitations. Doc #23 at ¶4. However that may be, Messrs Purtill
6 and Danko and the O'Reilly & Danko law firm appear to have taken no
7 steps after May 3, 2005, to obtain Mr Marsh's unambiguous assent to
8 filing an action on his and Mrs Marsh's behalf or to execute a
9 contingent fee agreement.

10 On these facts, it appears that Mr Purtill was not
11 authorized to sign and file the complaint on behalf of Mr and Mrs
12 Marsh on May 6, 2005. By doing so anyway, it appears that Mr
13 Purtill may have violated FRCP 11(b). Even if the failure to have
14 an unambiguous assent from Mr Marsh or to have in hand a signed fee
15 agreement before filing the complaint could be excused on grounds
16 that Messrs Purtill and Danko and the O'Reilly & Danko law firm had
17 reason to fear a possible lapse of the limitations period, the
18 failure to follow up after filing the complaint is difficult to
19 understand. Hence, the court has concerns that Mr Danko and the
20 law firm itself, as well as Mr Purtill, were responsible for the
21 unauthorized filing of the complaint. If they were responsible for
22 the unauthorized filing, they, too, may be subject to sanctions.
23 See FRCP 11(c)(1).

24 Accordingly, Stephen J Purtill, Michael S Danko and the
25 O'Reilly & Danko law firm are ORDERED TO SHOW CAUSE in writing why
26 sanctions should not be imposed against them for the improper
27 signing and filing of a complaint on behalf of Stephen and Valerie
28 Marsh in violation of FRCP 11. The writing is due on or before

United States District Court
For the Northern District of California

1 March 11, 2008. A hearing on the order to show cause will be held
2 March 18, 2008 at 10 am.

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5 IT IS SO ORDERED.
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8 VAUGHN R WALKER
9 United States District Chief Judge
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